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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814.879	03/31/2004	Liang Sheng Tsaur	J6896(C)	8437

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EXAMINER
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OGDEN JR, NECHOLUS

ART UNIT	PAPER NUMBER
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1751

MAIL DATE	DELIVERY MODE
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07/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/814,879		TSAUR ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Necholus Ogden		1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claims 1-26 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hofrichter et al (2003/0108501).

Hofrichter et al '501 disclose a shampoo containing cationic polymer and particles comprising 5 to 50% by weight of a surfactant such as anionic sulfates (0034, 00450; amphoteric and zwitterionic surfactants such as betaines (046-0048). Hofrichter et al further teach the inclusion of 0.025 % to at least 20% by weight of particles having a size of from about 0.01 micrometers to 80 micrometers (0051-0053), wherein said particles comprise mica, titanium dioxide (0056) and mixtures thereof. Moreover, additional ingredients are required by Hofrichter et al '501 such as cationic polymers in an amount from 0.05% to 2.0% and include quaternary ammonium alkyl methacrylates or vinyl pyrrolidone (0074-078) and other cationic polymers such as Polyquaternium-16, Merquat-100, Polyquaternium-6, Polyquaternium-7 (0081) and hydroxypropyl guar gums (0086). With respect to the structural dispersant, Hofrichter et al includes humectants in an amount from 0.5% to 20% by weight and include glycerin, sugar

alcohols, and polyalkylene glycols (0187-0190). Moreover, with further respect to the granular anionic polymer, Hofrichter et al includes xanthan gums as a suspending agent (0193). The examiner notes example 15, which exemplifies 6.0% of lauryl sulfate; 0.30% guar hydroxypropyl trimmonium chloride; 2.0% of titanium dioxide/mica and adjunct materials.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, Hofrichter et al '501 is silent with respect to the gloss value or optical microscopy measurements, however, these functional characteristics would have been inherent to the compositions of Hofrichter et al '501 because Hofrichter et al '501 teach each of the claimed components for the purpose of producing a rinse-off cleansing composition and Hofrichter et al '501 teach inclusion of optical modifiers within a cationic deposition system, wherein one would inherently expect similar characteristics given the same or similar compositions.

1. Claims 1-26 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hofrichter et al (2004/0186030).

Hofrichter et al disclose a personal cleansing composition comprising from about 5 to 50% by weight of a surfactant; from at least 0.1% by weight of an irregular shaped particle size; from at least 0.1% by weight of a spherical shaped particle size and water (008-0012). Hofrichter et al teach that said surfactant include sulfates, sulfosuccinates, and soaps (0037-0042); and said particles include particles with less than 100 um in an amount no more than 20% by weight and include titanium dioxide (0051-0054) and talc and mica (0077). Hofrichter et al further teach the inclusion of cationic polymers such

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as polyquaternium-7; polyquaternium-6 and polyquaternium-16 in an amount from 0.01 to 3.0% by weight (0084-0089). Other ingredients such as suspending agent are included in said personal cleansing compositions, such as xanthan gums, in an amount from 0.1 to 10% by weight (0162-0163).

Note, see examples and claims.

As this reference teaches all of the instantly required it is considered anticipatory.

In the alternative, Hofrichter et al is silent with respect to the enhancing effect and gloss values. However, it would have been inherent to the compositions of Hofrichter et al to combine the components to exhibit the characteristics of the claimed compositions, because Hofrichter et al teach each of the preferred components within their requisite proportions for the purpose of producing a personal cleansing composition containing particulate materials.

2. Claims 1-26 rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Midha et al (2003/019391).

Midha et al disclose a shampoo containing particles and a deposition aid comprising

Midha et al disclose a personal cleansing composition comprising from about 5 to 50% by weight of a surfactant; and from at least 0.1% by weight of a non-platy shaped particle size and water (006-009). Midha et al teach that said surfactant include sulfates, sulfosuccinates, and soaps (0030-0042); and said particles include particles with less than 100 um in an amount no more than 20% by weight and include titanium dioxide (0051-0054) and talc and mica (0053;0055;0064). Midha et al further teach the

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inclusion of cationic polymers such as polyquaternium-7; polyquaternium-6 and polyquaternium-16 in an amount from 0.01 to 3.0% by weight (0139-0140; 0146-0151). Moreover, Midha further includes a deposition in an amount from 0.05 to 5.0% by weight (0067). Other ingredients such as suspending agent are included in said personal cleansing compositions, such as xanthan gums, in an amount from 0.1 to 10% by weight (0183-0185).

Note, see examples and claims.

As this reference teaches all of the instantly required it is considered anticipatory. In the alternative, Midha et al is silent with respect to the enhancing effect and gloss values. However, it would have been inherent to the compositions of Midha et al to combine the components to exhibit the characteristics of the claimed compositions, because Midha et al teach each of the preferred components within their requisite proportions for the purpose of producing a personal cleansing composition containing particulate materials.

1. Claims 1-26 are rejected under 35 U.S.C. 103(a) as obvious over Zhang et al 6,780,826.
2. Zhang et al disclose a rise off personal care composition comprising a modified titanium dioxide coated mica particle having a flat plate-like geometry and a particle size of less than 150 um; 5 to 90% by weight of a surfactant such as anionic, nonionic, amphoteric, and zwitterionic; 0.1 to 20% by weight of water; structurants; cationic polymers; powders such as talc, starch or clays and adjunct materials (abstract; col. 8, line 65-col. 10, line 17 and col. 8, lines 56-63).

3. Zhang et al does not specifically teach with sufficient specificity the functional language describing the optical modifier(s).

Absent a showing to the contrary, It would have been obvious to one of ordinary skill in the art to expect the particles of Zhang et al to exhibit the characteristics of the claimed optical modifier, because Zhang et al teach the specific optical modifiers for the use of skin deposition and said properties would have been obvious characteristics of the specific optical modifier.

1. Claims 1-26 are rejected under 35 U.S.C. 103(a) as obvious over Clapp et al (2004/0223993).

2. Clapp et al disclose a personal care composition that deposits shiny particles comprising bismuth oxychloride and/or titanium dioxide as said particles (0051 and 0060); structurants (0075); surfactants in an amount of not more than 50% (0080-0100); thickening agents such as crosslinked polyacrylates or cellulose derivatives (0108); anionic surfactants from 0.1 to 30% by weight (0082); and cationic polymers such as cationic guar derivatives (0011-0116). Note, see examples 1-12 and claims.

4. Clapp et al does not specifically teach with sufficient specificity the functional language describing the optical modifier(s).

Absent a showing to the contrary, It would have been obvious to one of ordinary skill in the art to expect the particles of Clapp et al to exhibit the characteristics of the claimed optical modifier, because Clapp et al teach the specific optical modifiers for the use of skin deposition and said properties would have been obvious characteristics of the specific optical modifier.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/814,473; 10/443,396; 10/997,180; 11/043,315; 10/996,532; 10/815,003; 10/997,179; 11/043,509. Although the conflicting claims are not identical, they are not patentably distinct from each other because compositions with an optical modifier, surfactants, deposition aids and structurant/adjunct additives.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

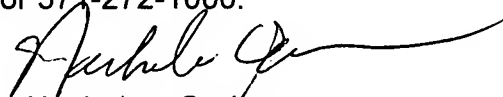
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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Necholus Ogden whose telephone number is 571-272-1322. The examiner can normally be reached on M-T, Th-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Necholus Ogden  
Primary Examiner  
Art Unit 1751

No  
7-9-2007